

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. I MC 59228 through I MC 59230.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

2. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Segregation -- Withdrawals and Reservations: Effect of

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

3. Administrative Authority: Laches -- Estoppel -- Laches
The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

APPEARANCES: J. Pat Kaufman, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

J. Pat Kaufman has appealed the decision of the Idaho State Office, Bureau of Land Management (BLM), dated September 10, 1982, declaring the Frozen Assets #1, #2, and #3 placer mining claims, I MC 59228 through I MC 59230, null and void ab initio.

Appellant and C. O. Weaver located the three claims on February 14, 1981, along the Salmon River in sec. 20, T. 24 N., R. 2 E., Boise meridian, Idaho, within the Nez Perce National Forest. Based on the metes and bounds descriptions on the claimant's location notices and accompanying map, BLM subsequently determined that the claims were located within one-quarter mile of the Salmon River, an area withdrawn from mineral entry by the Wild and Scenic Rivers Act (WSRA), 16 U.S.C. §§ 1271-1287 (1976 and Supp. V 1981) on October 2, 1968. Since the claims were located after that date, BLM held them to be invalid.

Appellant refers to a letter dated May 20, 1981, sent by BLM to him as his reasons for appeal. That letter stated:

On March 24, 1981, you filed mining location notices for Frozen Assets #1, #2, and #3 placer mining claims pursuant to the act of August 11, 1955 (69 Stat. 681).

The Forest Service has reported that mining with restoration is acceptable in the area of the above claims and will be administered under Title 36 CFR 252.

The Federal Energy Regulatory Commission has informed us the land is not presently included in any power project under permit or license issued under the Federal Power Act. Therefore, they have no objection to mining.

In accordance with section 4 of the above act, you are required to file a statement of the assessment work done or improvements made on the claims within 60 days after the expiration of each annual assessment year.

In 1968, the Salmon River, from the town of North Fork to its confluence with the Snake River, was designated as a potential addition to the national wild and scenic rivers system by section 5(a)(23) of the original WSRA. See 16 U.S.C. § 1276(a)(23) (1976). Under the WSRA, all land constituting the bed or banks or situated within one-quarter mile of the banks of such a designated river was withdrawn from all forms of appropriation under the mining laws until October 2, 1978, or, if a study report had been submitted to the President and Congress on the river, for up to an additional three years to allow for congressional consideration of the report. 16 U.S.C. §§ 1280(b), 1278(b) (1976 and Supp. V 1981).

Based on a study conducted by the Forest Service, the President recommended in 1977 that the entire 237-mile portion of the Salmon River designated as a potential addition to the wild and scenic rivers system by the WSRA be included in the system, but Congress limited its designation to 125 miles, from the town of North Fork to Long Tom Bar. 16 U.S.C. § 1274(a)(24)

(Supp. V 1981). 1/ The conference report on the central Idaho Wilderness Act of 1980, P.L. 96-312, 94 Stat. 948 (July 23, 1980), stated, however, that the conferees believed that the President's recommendations as to the remaining segment of the river had considerable merit but that "it was deemed desirable to defer action * * * until further public hearings [could] be held." H.R. Rep. No. 1126, 96th Cong., 2d Sess., as printed in 126 Cong. Rec. H5580, H5587 (daily ed. June 24, 1980). Based on this statement, we find that Congress intended to continue to study the portions of the Salmon River not included in the wild and scenic rivers system on July 23, 1980, and conclude therefore that the lands constituting the bed and banks and within one-quarter mile of the banks of the river from Long Tom Bar to the confluence of the Snake River must be considered to have been withdrawn from mining location for the full three years following October 2, 1978, or until October 2, 1981, under the WSRA.

[1] Appellant's claims were located in T. 24 N., R. 2 E., Boise meridian, which is west of Long Tom Bar along the portion of the Salmon River not designated part of the wild and scenic rivers system in 1980. 2/ Examination of the location notices for the claims and the accompanying map places the claims within one-quarter mile of the banks of the river. 3/ A mining claim located on land previously withdrawn from appropriation is null and void ab initio. Clarence E. Fitzgerald, 55 IBLA 31 (1981).

[2] In addition to the withdrawal imposed by the WSRA, the record reflects that in 1973 both BLM and the Forest Service filed applications for protective withdrawals for Federal lands under their jurisdiction in the bed or banks or situated within one-quarter mile of the banks of the same portion of the Salmon River as designated under section 5(a) of the WSRA. 4/ Both

1/ Mining activity along rivers included in the wild and scenic rivers system is governed generally by section 9(a) of the WSRA. 16 U.S.C. § 1280(a) (1976). In the case of the Salmon River designation, all dredge and placer mining activity in the beds of the river is prohibited by 16 U.S.C. § 1274(a)(24)(D) as well.

2/ The case record contains letters dated Aug. 23 and 31, 1982, from the Forest Service to BLM in regard to cancellation of its withdrawal application, I-7317, for lands along the Salmon River from Long Tom Bar to the Nez Perce National Forest boundary near Riggins, Idaho, because these lands have not been designated part of the wild and scenic rivers system (see also discussion, infra). The descriptions of these lands contained in the Aug. 30 letter include sec. 20, T. 24 N., R. 2 E., Boise meridian.

3/ Each claim is described as being one-quarter mile long and one-eighth mile wide. The Frozen Assets #1 claim lies across the bed and banks of the Salmon River. The Frozen Assets #2 claim borders the river for one-quarter mile and extends out from the river one-eighth of a mile. The Frozen Assets #3 claim adjoins the Frozen Assets #2 claim on its nonriver one-quarter mile side and extends out from there one eighth of a mile.

4/ The withdrawals provided for in the WSRA, as enacted, only extended for 5 years. WSRA, §§ 7(b), 9(b), 82 Stat. 914-15. Although legislation to extend the withdrawals was under consideration in 1973, it did not appear that it would be enacted before Oct. 2, 1973, and therefore BLM and the Forest Service acted to protect the wild and scenic values of the Salmon River. See Letter from Assistant Secretary, Department of Agriculture, to Secretary of the Interior, dated Sept. 28, 1973; Memorandum from Director, BLM, to Assistant Secretary, Land and Water Resources, dated Sept. 28, 1973.

withdrawal applications, I-7317 (FS) and I-7322 (BLM), encompassed T. 24 N., R. 2 E., Boise meridian, and were noted officially to the land status records in 1973. The noting of the application temporarily segregated the lands from location under the mining laws to the extent that the withdrawal, if effected, would do so, 43 CFR 2091.2-5 (1973), and the lands remain segregated until October 20, 1991, unless terminated sooner. 43 CFR 2310.2.

The Forest Service withdrawal application was cancelled as to T. 24 N., R. 2 E., Boise meridian, on October 8, 1982. 47 FR 39897 (Sept. 10, 1982). By memorandum dated February 10, 1983, BLM has informed us that it has not yet canceled its withdrawal application. Thus the lands encompassed by appellant's mining claims were also closed to mineral entry at the time of their location by the segregative effect of these withdrawal applications. A mining claim located on land after the land is segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is properly declared null and void ab initio. Lester M. Holt, 69 IBLA 180 (1982).

[3] It is unfortunate that BLM did not review the notices of location for appellant's claims sufficiently to discover their invalidity before transmittal of the letter to appellant. However, the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers, or by their laches, neglect of duty, failure to act or delays in the performance of their duties, 43 CFR 1810.3(a), nor can reliance on information provided by a BLM employee operate to vest any right not authorized by law, 43 CFR 1810.3(c). Virgil V. Peterson, 66 IBLA 156 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Idaho State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

